

The lawsuit syndrome

According to the June 1970 Annual Report of the Canadian Medical Protective Association, the incidence of lawsuits against practising physicians is rising. Until 1969 I read the Annual Report of the CMPA with interest and with the usual confidence that this kind of thing could never happen to me.

In December 1969, however, I received a letter from a lawyer announcing that a suit had been brought against me by a patient. My first reaction was abject fear. This was replaced immediately by the question "How could it happen to me?" I immediately contacted the CMPA and told the secretary of my predicament. I obeyed his request and forwarded a summary of my records of the case. Then I settled back and waited for further instructions from the Association, which arrived shortly by registered mail.

Over the following weeks my anxiety slowly dissipated, to be replaced by depression. I lost weight and my hair, what remained of it, fell out even faster. I began to have anorexia and insomnia and became unable to consider the subject for more than three minutes without breaking into a cold sweat.

In my unsophisticated ignorance I was concerned about the possibility of a criminal action, in short, that I might go to jail. My lawyer assured me that this was a civil and not a criminal case. He also expressed some surprise at my reaction and that of other physicians when faced with litigation. Of course I do not believe lawyers are aware that physicians are concerned about loss of their licence and damaging publicity in the newspapers, and even have thoughts of suicide.

During that time, and against the advice of the CMPA, I discussed my problem with a number of physicians

who themselves had been sued, and I was heartened, since misery loves company, to find that they had experienced virtually the same reaction. These conversations were helpful for the catharsis they provided, if nothing else!

I then became impatient. The wheels of justice certainly grind, but they grind extremely slowly. Nevertheless, the slowness has one advantage — it gives you time to settle in your own mind your reaction to the problem.

After the initial discussion with the lawyer and the signing of the affidavits and other documents, life began again but certainly under a black cloud. Although you are able to work and carry out your activities, you become paranoid and every patient is suspect. You document everything, even phone calls, conversations in hallways, and remarks exchanged on the golf course, if you have given any medical advice during their course. Fortunately, most physicians I talked to did continue to practise the same brand of medicine as they had done prior to the lawsuit, but perhaps more carefully. I did likewise.

The loss of self-esteem is by far the greatest blow that is suffered. Physicians are an interesting breed. I find that most are conscientious and aware of the responsibility they bear in society. They find it very difficult to accept that a layman should question their judgement. However, on reflection, if laymen can question the judgement of their politicians, their generals, their bakers, butchers and candlestick-makers, why should not a physician's judgement be questioned as well?

All in all, the experience certainly brings you back down to earth and out of the clouds.

It wasn't until February, four months later, that I found a note on my desk informing me that my lawyer wished to talk to me. Again, the sensation of

fear descended — palpitations, sweat breaking out on my palms and intestines going into spasm. You phone; he says that in 10 days you have to be present at an Examination for Discovery. Of course you don't know what an Examination for Discovery is, but going to one is an experience indeed. It is at this time that you meet your adversary, the litigant's lawyer, and of course your first reaction is to think that he's a bastard. This is obviously ridiculous, because you know he is only doing a job, but you can then empathize with criminals, whose responses must be no different from yours. You also meet your former patient face to face. She greets you with a cheery "Hello"; you foolishly ignore her. You think: "Ungrateful bitch, after all I tried to do for her. There should be a law against people like this". The examination begins. The first question the lawyer asks you is if you have a licence to practise. You feel like reaching across the table and giving him a broken nose, but you grip the table with your hands and remember what your own counsel said: "Just answer the questions and don't get upset. Be honest, be forthright. Don't get angry and consider your answers extremely carefully". They go over your documentation and your reasons for carrying out the action that you did. This goes on for two solid hours, which pass very quickly. You are exhausted at the end of it and ask your lawyer "What next?" He says, in a somewhat cavalier fashion, "Oh well, we really don't know, it may take six months before you hear from us again". You go out into the sunshine and the depression lifts slightly and you drive home. You tell your wife the whole story and you secretly thank God for her, because she keeps you sane. If I can give any useful advice on how to

act in this particular situation, it is that you *must* talk to your wife, or if you haven't got one, or can't talk to her, you must talk to somebody, otherwise you will go crazy.

After this episode you return to work, perhaps slightly relieved, but you are continuously mulling over in your mind what you will say when you go to court and what you will say to your colleagues, friends, neighbours and patients when all of this comes out in the paper, because, of course, this is going to be splashed onto the front page.

You return to work, a year passes and nothing happens. You contact your lawyer and he says "I am sorry, I have no word for you at the present time; carry on". Your sleep becomes more disturbed and you wake up at night with sweats and palpitations. You increase your intake of tranquillizers and cigarettes and liquor. Your work is just acceptable; every patient is suspect, but you carry on and, fortunately, nobody else makes a complaint during that year. You become extremely careful and you document everything to the nth degree. You are convinced that your friends will desert you, your enemies will smile and say "Aha, I knew he was no good all along". You are sure you'll never get over this. You even go out onto the mountains and ski and for the first time you don't

forget your troubles gliding down the hills. It's you, the mountain and the damned lawsuit. You drive to work and your whole time is taken up in thinking of the outcome of this event.

Another year passes and, exactly to the day, you get another call from the lawyer. *She* has changed her lawyer and she has to have another Examination for Discovery in two months. Again, you become depressed. Once more, fear rises. You sleep less than before and your weight continues to fall. You reread the whole document because you are forgetful and can't remember the small details. For two months you eat, sleep, work and read the document. You give up your exercise program, increase the number of cigarettes you smoke, you get stinking drunk at parties and sex becomes non-existent; your ulcer reactivates.

The second Examination comes. You are impressed by her new lawyer. He is slick, but you are now an old hand at this and you talk to him and do exactly the same as you did previously. Your lawyer congratulates you. He says you're impressive. You go home and you know that things really can't be as bad as you thought they would be. You are surprised at your "cool".

You wait and ask yourself "Why doesn't she settle this damned thing out of court?" You look in the obituaries; maybe she was killed in a car accident or died from another disease. You consider assassination. You wonder "Why don't they get it over with?" again and again and again. Another year slowly passes in silence. You relegate the problem to the back of your mind. You only start thinking about it now at bedtime, so that the only thing you lose is some sleep. You begin exercising again, but your cigarette consumption stays up and your drinking habits alter only slightly. You wait six more months. Your practice flourishes. Everything is as good as it ever will be. All of your goals in life have been reached. Your home is paid for. You have money in the bank. You have a good reputation. You are appointed a part-time professor at the medical school. Everything is rosy, except that one small corner of your mind makes you wonder if there is any point in doing anything.

That year the CMPA report comes out and what you are sure is that your case is cited. In quotation marks you read "since they did such and such a thing, they are clearly indefensible" and you think "My God, I haven't got a chance!" Your lawyer calls you that day because he also has read the report, and says "Don't let it worry you, it's probably a case which came out of the East", which you know is utter rubbish, and again the depression

comes back. You read the crime page in the local paper; fellow lawbreakers, you know how they feel. You search the obituaries again — no luck!

Six more months go by. Three and a half years to the day and still no solution. The next day there is a note on your desk "Phone your lawyer". You phone amidst palpitations, sweat and cramps and you hear: "He is in conference". "For God's sake get him out of conference. This is Dr. So-and-So speaking and I want to talk to him immediately". "I am sorry sir, he cannot be disturbed". You phone three more times and eventually have to leave a message. The last patient leaves the office and then the phone rings. It's your lawyer. He says "Doctor, you are off the hook! All's well that ends well. She has settled out of court for a really minimal amount". It works out to about \$400 a year, over a three-year period. Since she had originally asked for \$75,000, you are quite relieved. You are happy the CMPA does not have to declare bankruptcy because of your stupid misdeemeanour. You go home and collapse into tears in your wife's arms and it's all over. You are three years older and a sadder and wiser man. You think back on it and you think about what you learned from this experience.

Well, the first thing you learn is to become an extremely careful physician. You document everything and you do nothing that you are not quite certain you can handle. Secondly, you do exactly as the CMPA tells you and you realize what a tremendous organization this is when you consider that it is, fortunately, patterned after the Medical Defence Union of Great Britain and you don't have to pay horrendous premiums, as they do in the United States, in order to be covered. Thirdly, you realize that you are a human being after all. You are not infallible, nor are any of your colleagues. Fourthly, you finally realize that you have to slow down and think before you act. Finally, your empathy towards depressed and anxious patients is vastly increased.

These things are not in the CMPA Bulletin, but I have talked to a number of physicians who have undergone this experience and have found their reactions to be similar. I hope that my description of the situation will be of some value to those of you who will be sued in the future. Do not think that you will escape it. Simply look at the graph in the 1972 report of the CMPA and you will realize that it is a possibility. It could even happen to me again, and I wonder, when I read this over, if it will be of any help to me. I certainly hope so.

HUMILITAS

POSTGRADUATE COURSES

Doctors who attend refresher courses for which they pay tuition fees to a university, a teaching hospital or other educational institution in Canada may claim, as an income tax deduction, fees so paid if they exceed \$25.00.

MOTHER-INFANT ATTACHMENT: IMPLICATIONS FOR PERINATAL CARE. Ewart Angus Centre, McMaster University Medical Centre, Hamilton, Ont. November 14, 1973. Information: The Clinical Meetings Department, Wyeth Ltd., P.O. Box 370, Downsview, Ont. M3M 3A8

SYMPOSIUM SUR LA GERONTOLOGIE. Hôpital Notre-Dame-de-la-Merci, Montréal. Le 17 novembre 1973. Renseignements: Directeur du Service d'éducation médicale continue, Université de Montréal, C.P. 6128, Montréal 101, Qué.

CLINICAL PRACTICE AND COMPUTERS. Ontario Hospital Association, Don Mills, Ontario. November 23-24, 1973. Information: The Director, Division of Postgraduate Medical Education, University of Toronto, Toronto, Ont. M5S 1A8.

BREATHING IN THE FETUS AND NEWBORN. Ewart Angus Centre, McMaster University Medical Centre, Hamilton, Ont. November 28, 1973. Information: The Clinical Meetings Department, Wyeth Ltd., P.O. Box 370, Downsview, Ont. M3M 3A8.

DAY IN MEDICINE FOR FAMILY PHYSICIANS. McMaster University Medical Centre, Hamilton, Ont. November 28, 1973. Information: Dr. W. C. Nicholas, Associate Professor, Department of Medicine, McMaster University Medical Centre, 1200 Main St. W., Hamilton, Ont. L8S 4J9

PEDIATRIE EN PRATIQUE GENERALE. Holiday Inn, Montréal. Les 28-30 novembre 1973. Renseignements: Directeur du Service d'éducation médicale continue, Université de Montréal, C.P. 6128, Montréal 101, Qué.